

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1348

House Bill No. 402*

by deleting all language after the enacting clause and by substituting instead the following:

Section 1. Tennessee Code Annotated, Section 65-21-101, is amended by adding the following new sentence at the end of the existing section:

For the purposes of the part, "telegraph and telephone corporation" includes any entity that provides any two-way communications service for hire to the public generally by whatever means.

Section 2. Tennessee Code Annotated, Section 65-21-103, is amended by deleting the section in its entirety and by substituting instead the following:

Section 65-21-103. Local regulation. -- Any political subdivision of this state within which such line, as provided in Section 65-21-101, may be constructed, shall have all reasonable, non-discriminatory police powers to regulate the construction, maintenance or operation of the line within its limits. For the use of such rights of way, each telegraph and telephone corporation shall pay an annual rental to the state treasury in an amount equal to twenty-five cents (\$.25) for each owned, wired access line of that corporation used in providing basic local exchange telephone service in Tennessee. The total rental thus received shall be distributed to the political subdivisions in Tennessee by the comptroller of the treasury on the same basis as is provided for the apportionment of distributable property in title 67, chapter 5, part 13. No political subdivision shall have the right to prevent any such telegraph and telephone corporation from constructing, maintaining and operating lines within its limits, so

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long as the line is being constructed, maintained and operated within that political subdivision in accordance with reasonable, non-discriminatory police regulations; provided that any application for permission to use the public rights of way shall be deemed to have been granted if not acted upon within ninety days after the date of filing. No political subdivision shall have the power to request or receive from any such telephone and telegraph corporation, as a condition for using public rights of way or for doing business within its limits, any sum or to provide any in-kind facilities, other than the rentals herein authorized. Any telephone or telegraph corporation aggrieved by any act taken or threatened by a political subdivision contrary to the provisions of this section may bring a suit for injunctive or declaratory relief, or both, in any chancery court of competent jurisdiction.

Section 3. Tennessee Code Annotated, Section 65-21-105, is amended by deleting the section in its entirety and by substituting instead the following:

Section 65-21-105. Pole attachment agreements. (a) No municipally or cooperatively owned utility shall request or receive from a telegraph or telephone corporation, or a cable television provider as defined in Section 602(5) of the Federal Cable Policy Act of 1984, in exchange for permission for pole attachments as provided by 47 U.S.C. Section 224(a)(4), any payment in excess of the amount that would be authorized pursuant to 47 U.S.C. Section 224, as amended.

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(b) No municipally or cooperatively owned utility shall request or receive from a telegraph or telephone corporation, any in-kind payment in exchange for or as a condition upon a grant of permission for pole attachments.

(c) A municipally or cooperatively owned utility shall provide access to its poles and conduit located in public rights of way to any telegraph and telephone corporation or cable television who requests a pole attachment agreement on terms and conditions consistent with this section and other applicable law. Such pole attachment agreement may be refused only on the basis that the provision of the requested access is not technically feasible. Any telegraph and telephone corporation or cable television provider who is denied such an agreement may bring a suit for a declaratory judgment or injunction, or both, to determine and enforce its rights to such an agreement in any chancery or district court of competent jurisdiction. A municipally owned or cooperatively owned utility shall apportion the costs of providing usable space on its poles among all entities according to the percentage of usable space required for each entity; but the costs of any relocation of existing users shall be borne by the entity or entities creating the necessity for such relocation.

Section 4. The provisions of this act shall apply to all franchises, contracts or agreements coming within its terms whether granted or entered into before or after the effective date of this act. The provisions of this act shall not, however, be constructed to grant any telecommunications service provider any additional operating authority beyond

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that granted by the Tennessee Public Service Commission or the Tennessee Regulatory Authority.

Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

Section 6. This act shall take effect upon becoming a law, the public welfare requiring it.

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